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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,474	03/19/2004	Katsuhiko Ito	HGM-140-A	7222

7590 08/16/2005  
Carrier, Blackman & Associates, P.C.  
24101 Novi Road #100  
Novi, MI 48375

EXAMINER
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LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*Tom*

<b>Office Action Summary</b>	Application No. 10/804,474	Applicant(s) ITO ET AL.	
	Examiner F. Daniel Lopez	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                              |                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/19/04</u> . | 6) <input type="checkbox"/> Other: ____                                                |

***Claim Rejections - 35 USC § 112***

Claims 1-4 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 last line "a swash plate adjustment mechanism" should be --said swash plate adjustment mechanism--, since it has been previously claimed (line 3).

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hayashi et al (5,353,595). Hayashi et al (5,353,595) discloses a hydraulic continuously variable transmission comprising a pivotally movable motor swash plate (37) supported by a motor pivot member (38), which is supported by a concave hemispherical support socket (e.g. fig 2) formed in a motor casing (41), as part of a swash plate plunger motor (M); a swash plate plunger pump (P) connected to the motor via a closed circuit; a hollow housing including an auxiliary portion extending upwardly from a base portion (e.g. enclosing the pump, motor and gearing (13)); wherein the auxiliary portion contains an adjustment mechanism (43) for moving the motor swash plate.

Claims 1, 3 and 5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hayashi et al (4,781,022). Hayashi et al (4,781,022) discloses a hydraulic continuously variable transmission (E.G. FIG 15, 23) comprising a pivotally movable motor swash plate (20) supported by a motor pivot member (22), which is supported by a motor casing (41), as part of a swash plate plunger motor (M); a swash plate plunger pump (P) connected to the motor via a closed circuit; a hollow housing including an auxiliary

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portion (283) extending upwardly from a base portion (4); wherein the auxiliary portion contains an adjustment mechanism (R) for moving the motor swash plate; with a servo motor (286) attached to a side surface on a first side (front) of the auxiliary portion.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 2 and 7 are rejected under 35 U.S.C. § 103 as being unpatentable over Hayashi et al (4,781,022) in view of Pouliot. Hayashi et al (4,781,022) discloses all the elements of claims 2 and 7, as discussed in the 102 rejection above; but does not disclose that an identification mark display portion is provide on a second side surface of the auxiliary portion, substantially opposite the first side.

Pouliot teaches, for a hydraulic continuously variable transmission, that all parts should have at least one face stamped with an identification mark display portion (plane identifying letter) before assembly (column 12 line 55-column 13 line 1).

Since Hayashi et al (4,781,022) and Pouliot are both from the same field of endeavor, the purpose disclosed by Pouliot would have been recognized in the pertinent art of Hayashi et al (4,781,022). It would have been obvious at the time the invention was made to one having ordinary skill in the art to stamp at least one face of the auxiliary portion of Hayashi et al (4,781,022) with an identification mark display portion before assembly, as taught by Pouliot, for identification purposes.

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Since one having ordinary skill in the hydraulic continuously variable transmission art would recognize that any face can be chosen to be stamped by an identification mark display portion, it would have been obvious at the time the invention was made to one having ordinary skill in the art to stamp a second side surface of the auxiliary portion, substantially opposite the first side, as a matter of engineering expediency.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

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F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
August 12, 2005